

# **EXHIBIT F**

## **PART 3**

1 objection.

2 THE WITNESS: Yes, with my understanding of  
3 what those words mean, yes.

4 BY MR. HARTMAN:

5 Q. This is a substantial addition to the  
6 press. Did you indicate that the two palm -- two  
7 hand controls and movable pedestal is a substantial  
8 addition to the press?

9 A. Yes.

10 Q. What do you mean by it is a substantial  
11 addition to the press?

12 A. Well, you know what the two hand controls  
13 look like. They probably weigh 50 pounds or more,  
14 and they are big. And they weren't there when the  
15 press was sold and someone came along, and  
16 I believe it was Cory, they had that installed as a  
17 possible feature for this press. And I think it is  
18 a substantial change in the way the press would  
19 operate, perform, appear, function, all of those  
20 types of things.

21 Q. Would it affect the way the foot control  
22 would work when utilized with the press brake?

23 MR. ROBINSON: I will object to the form of the  
24 question.

1 THE WITNESS: If you turn the key to the two  
2 hand controls, the foot control wouldn't work at  
3 all.

4 BY MR. HARTMAN:

5 Q. If you turn the key to foot control, would  
6 the foot control operate as it had originally been  
7 intended to in conjunction with the press brake?

8 MR. ROBINSON: Objection to the form.

9 THE WITNESS: You know, I have never seen that  
10 demonstrated that it would. I have assumed that it  
11 probably would but factually I don't think anyone  
12 took the foot control that was sent by Heim and  
13 used it with this two hand control to see if  
14 turning the switch actually did that. I assume it  
15 probably did but I haven't seen it done by anyone.

16 BY MR. HARTMAN:

17 Q. So you have no information with regard to  
18 that?

19 A. I don't think anyone does, that's correct.

20 Q. You have no information relating to that?

21 A. I haven't seen anyone have any information  
22 in that regard.

23 Q. I understand about your statement about  
24 anyone. I am asking you personally --

1 A. Including myself.

2 Q. So you have no information as it relates  
3 to that issue?

4 A. I have not seen it demonstrated. I don't  
5 have demonstrated information.

6 Q. Do you have an opinion as to whether or  
7 not the addition of a two hand control and a  
8 movable pedestal is a good addition or a bad  
9 addition?

10 MR. ROBINSON: Object to the form of the  
11 question.

12 THE WITNESS: That depends.

13 BY MR. HARTMAN:

14 Q. Please tell me why, what it depends on.

15 A. Well, these two hand controls are supposed  
16 to have control reliability. If it doesn't have  
17 control reliability, it probably isn't a good thing  
18 to do. They are supposed to be anti-repeat,  
19 anti-tie down. If it doesn't perform that way, it  
20 is probably not a good idea. They are supposed to  
21 be spaced in such a way and configured in such a  
22 way that it is difficult for someone to cheat them.

23 It is consideration about where you should  
24 place two hand controls because of the possibility

1 of causing the machine to start to cycle and then  
2 moving your body part into an accident area.

3 So you can't say that the addition of two  
4 hand controls is always good or always bad. There  
5 are a lot of other considerations.

6 BY MR. HARTMAN:

7 Q. Did the addition of the two hand control  
8 on the Heim press brake that Ms. Lindquist was hurt  
9 on contribute to her accident?

10 MR. ROBINSON: Object to the form of the  
11 question.

12 THE WITNESS: I think the way it may have  
13 contributed to her accident is that the machine  
14 probably should have been cycled for the part she  
15 was making probably using the two hand controls and  
16 using point-of-operation safeguarding.

17 But it itself is separate how it might interact  
18 with the foot control, it itself probably didn't  
19 change. I am assuming it didn't change the  
20 functioning of the foot control.

21 BY MR. HARTMAN:

22 Q. Do you have any information that leads you  
23 to believe that the placement of the two hand  
24 control and movable pedestal for use on the Heim

1 press brake that Ms. Lindquist was injured  
2 contributed to her accident?

3 MR. ROBINSON: Objection. You just asked it.  
4 He just gave you an answer. You apparently didn't  
5 like his answer.

6 THE WITNESS: She wasn't using the two hand  
7 control at the time of the accident. I think had  
8 she been using it and using it properly and had it  
9 been configured properly, this accident most likely  
10 would not have happened. But she wasn't using it  
11 at the time of the accident. It is a substantial  
12 change to the piece of equipment. I think it could  
13 have saved her these injuries but it obviously was  
14 not in use.

15 BY MR. HARTMAN:

16 Q. It didn't cause her injuries, though,  
17 correct?

18 MR. ROBINSON: Objection. You just asked it  
19 again because you don't like his answer.

20 THE WITNESS: I think the lack of using it  
21 caused or contributed to her accident.

22 BY MR. HARTMAN:

23 Q. The next paragraph you indicate, and  
24 I quote, there are few photographs of a foot

1 control reportedly in use at the time of the  
2 accident. The photographs show some  
3 characteristics that are inconsistent with the  
4 original foot control and its exact manufacturer  
5 cannot be determined based on the photographs.

6 Did I accurately read your report?

7 A. Yes.

8 Q. What characteristics were in the  
9 photographs that indicate to you that the foot  
10 control involved in this accident was not the  
11 original foot control at the time of the  
12 manufacture of this machine?

13 A. I think the primary thing is the fact that  
14 the pedal, that the Linemaster foot controls, every  
15 part of the housing and components are kind of a  
16 bright orange; and I believe the photographs show  
17 that the pedal is darkened. And that makes me  
18 wonder if that control might not have been a hybrid  
19 or modified or made by someone else.

20 Q. Would you expect a foot control that is  
21 used for 30-plus years to become darkened inside of  
22 the shield?

23 MR. ROBINSON: Object to the form.

24 THE WITNESS: Well, obviously the foot control

1 wasn't used for 30-some years because the foot  
2 control that was there at the time of the accident  
3 is different than the foot control that was sold by  
4 Heim.

5 But certainly I would expect the foot control  
6 might change its color to some extent. I don't  
7 know that I would even expect, depending on the  
8 production, that a foot control pedal would  
9 necessarily survive for 30 years.

10 I believe the testimony of one of the people  
11 for the maintenance for Cory said it looked new to  
12 him and he wouldn't be surprised if that was the  
13 original equipment.

14 But that's what I was referring to in this  
15 sentence was the fact that the pedal itself appears  
16 to be dark, and I think Linemaster did not sell  
17 them that way.

18 BY MR. HARTMAN:

19 Q. If it was a Linemaster, is it your  
20 testimony you would expect to see orange on the  
21 inside?

22 A. That's correct.

23 Q. The next paragraph you indicate, the  
24 self-inflicted injury appears to have occurred when

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1 the plaintiff pressed her foot downward on the foot  
2 control while still having her hand within the dye  
3 on the press brake; am I correct?

4 A. Yes.

5 Q. When you talk about self-inflicted, do you  
6 mean because she inadvertently activated the press,  
7 is that how she self-inflicted these injuries?

8 A. She -- her movement, her body movement,  
9 her actions are what initiated -- and her -- having  
10 her hands in the point of operation are what caused  
11 this injury.

12 It wasn't as if there was an electrical  
13 short or there was some lightning or some other  
14 person came along and threw a switch. It was  
15 through her own actions with the foot control and  
16 her own actions with her hands.

17 Q. And it is your understanding that the  
18 accident happened because Ms. Lindquist  
19 inadvertently activated the foot control causing  
20 the press brake to cycle; am I correct?

21 A. It is my understanding that her foot  
22 pressed down on the foot control and that caused  
23 the press brake to cycle and that's -- and her  
24 hands were at the point of operation and that's why

1 they were injured, that's correct.

2 Q. Do you believe it was an inadvertent or  
3 advertent pressing down on the foot control?

4 A. You know, that's an interesting question.  
5 I don't believe it was inadvertent in that she had  
6 a muscle twitch necessarily that caused it.  
7 I believe that it is probably that she is leaving  
8 her foot on the foot control and that she is  
9 familiar with cycling the machine, and she cycles  
10 it probably by some mental signal going through her  
11 nervous system causing her foot to move.

12 But we will never know that because no one  
13 took a photograph or documented it at the time or  
14 there is no way to properly document that. So  
15 I guess that's my opinion about that.

16 Q. Do you have any evidence that she intended  
17 to operate the foot control while her hands were in  
18 the dye?

19 A. No, I don't think she was intending on  
20 maiming herself or amputating fingers.

21 Q. What evidence do you have that  
22 Ms. Lindquist left her foot in the foot control at  
23 the time of her accident immediately prior to the  
24 operation of the foot control?

1           A.    Most of the evidence is based on human  
2    factors kinds of things, literature, probabilities,  
3    functionality of this kind of equipment and the  
4    task she is doing. I mean there have been two  
5    general situations described here, either she is  
6    riding the pedal and her foot goes down at an  
7    inappropriate time when her hands are there or  
8    somehow her foot just magically slides into this  
9    place, takes a whole bunch of turns and maneuvers  
10   and does it at an inappropriate time.

11                I think it is more likely than not that  
12   her foot was in there. And if you look at her own  
13   testimony, even though she says she doesn't think  
14   her foot was there, there is many times in her  
15   testimony or there is a time in her testimony when  
16   she is not absolutely certain as to what went on.

17                People, when they are using this kind of  
18   equipment or controls of this type, become  
19   habituated to doing certain things and they don't  
20   make overt cognitive records in their mind of  
21   what's going on.

22                It is like when you drive into the office  
23   or into work, if you take the same route over and  
24   over again, you habitualize yourself to where there

1 are stop signs, to where there might be children,  
2 to where there might be a problem in the road. And  
3 if they suddenly put up a new stoplight or a new  
4 traffic control device, you might be startled by it  
5 or actually violate that new control because you  
6 have become habituated to it.

7 Foot controls people become habituated to.  
8 It is talked about in the literature. It is talked  
9 about in the literature that the most common kind  
10 of accident where people get hand amputations or  
11 hand injuries is because they have been riding the  
12 pedal.

13 And if you look at this from a human  
14 factors standpoint that there is an incentive to do  
15 that, this machine can run fairly fast and she is  
16 making a significant number of parts per day. This  
17 isn't a one or twosie kind of operation. If you  
18 look at the human factors associated with an  
19 accidental slide in, it is so complicated and  
20 contorted, it seems very unlikely that that's what  
21 happened.

22 BY MR. HARTMAN:

23 Q. You talk about literature that you rely  
24 upon for habituated, to show that. Can you tell me

1 what literature you are -- the articles or journals  
2 that you are referring to?

3 A. I didn't specifically bring those with me  
4 but I think most of the articles I mentioned that  
5 talked about the general safety philosophy that  
6 were in my report, talk about the concept of people  
7 developing workplace habits.

8 Q. What article is that, sir? I am sorry.  
9 I have read your report many times. I don't know  
10 what article you are talking about.

11 A. Okay. I didn't bring any articles with  
12 me, and I didn't in my report here cite the  
13 well-known --

14 Q. What page are you on?

15 A. I am not done with what I was answering.  
16 -- the well-known concept of people being  
17 habituated to certain behaviors but in articles and  
18 in books like those on page 14 in the last  
19 paragraph, it starts out with the word indeed,  
20 Safety Management and Occupational Safety and  
21 Health and a couple of the books I had in taking  
22 human factors courses -- I can't get their name  
23 right offhand, but they talk about -- and it is  
24 well-known in the literature and you know it from

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1 your own life experiences that people have certain  
2 habits.

3 I have a habit of drinking a lot of water  
4 when I am talking. Some people play with pens when  
5 they are doing things. People who use a certain  
6 control repeatedly over and over again become  
7 habituated to it.

8 In fact I think in one of Professor  
9 Barnett's publications he talks about in cars and  
10 automobiles people becoming habituated. They don't  
11 have to look to see where the brake pedal is, where  
12 the clutch is, where the gas pedal is. You know by  
13 habit what pedal to push on and where it is at. We  
14 develop these habits.

15 She would have been habituated to leaving  
16 her foot on this kind of control. She would have  
17 also been habituated to the fact to know that there  
18 is a foot control somewhere around that foot, that  
19 it is not way over here, that it is not behind her,  
20 that it is not eight inches off the floor.

21 She has placed her foot so many times in  
22 that foot control that she has to know that it is  
23 there. She has to know how it functions; and she  
24 has to know if she leaves her foot in there, it

1 will save her having to move her foot back and  
2 forth and back and forth. And this machine can  
3 cycle as fast as 60 times or 30 times a minute so  
4 there could be some production mode where she would  
5 be doing this that often. So she has been  
6 habituated to that. And I think that's part of  
7 this riding the foot pedal and why it is  
8 accidentally activated.

9 And that one article by the fellow from  
10 NIOSH talks about that when there is an especially  
11 fairly short cycle time -- and it is like 17 cycles  
12 per minute I think is what it is -- that that is  
13 where there starts to be a correlation between  
14 people accidentally stepping on the control and  
15 getting some kind of an injury.

16 So that's -- they don't use the word  
17 habituation but that's what they are talking about  
18 in that article. And I think that was one of the  
19 articles -- the article that we made as an exhibit  
20 early on in my deposition.

21 Q. What is the National Safety Council?

22 A. What is it?

23 Q. Yes.

24 A. My understanding, it is a not-for-profit

1 organization. It is headquartered in one of the  
2 western suburbs of Chicago. It has been around  
3 from I think the '20s or '30s whose goal it is to  
4 promote safety whether it be in the workplace,  
5 consumer safety, personal safety, those kinds of  
6 things.

7 They author many documents, publications,  
8 books on safety. They are the organization that  
9 provides the framework for a variety of groups that  
10 are outside of the National Safety Council to come  
11 together and either write safety documents, give  
12 safety seminars or to sit on safety-related  
13 standards committees.

14 So, for example, I am not employed by the  
15 National Safety Council but they have a Power Press  
16 and Forging and Metal Fabrication Committee that  
17 includes press brakes. And I have been a member of  
18 that committee for 20-some years and vice-chairman  
19 and chairman and a presenter at many of their  
20 conferences having to do with a variety of  
21 equipment including press brakes.

22 We have authored publications about  
23 safeguarding. So I am one of the cited authors in  
24 their publication on power press safeguarding and



1 one of their authors on general safeguarding of  
2 equipment. That's what they do. That's kind of  
3 their structure. I think through them I was  
4 actually on a B-11 committee, two different  
5 committees having to do with machine tools  
6 including equipment like the press brake.

7 Q. Am I correct it is not a governmental  
8 entity?

9 A. No, it is not.

10 Q. Am I correct it is not a governmental  
11 organization?

12 A. It is not a branch of the government, no.  
13 They may have contracts with the government to do  
14 certain kinds of things but they are not a branch  
15 of the federal government or state government.

16 Q. Have you ever read the Accident Prevention  
17 Manual For Industrial Operations published by the  
18 National Safety Council?

19 A. I have read bits and pieces of it.  
20 I doubt I have read every word in it.

21 Q. Have you cited National Safety Councils in  
22 your report?

23 A. Yes.

24 Q. Are you relying upon the articles that you

1 cited in order to formulate the opinions contained  
2 in your report?

3 MR. ROBINSON: Object to the form. Excuse me.

4 THE WITNESS: I am using them as examples.

5 I could have cited one. I could have cited a  
6 half-dozen in support of those opinions. But it  
7 seemed to me it would be fruitless to try to make  
8 the most exhaustive list of articles. I picked  
9 articles that I thought were representative of a  
10 broad theory concerning this equipment.

11 So, for example, for ANSI standards  
12 I looked at three different years.

13 For data sheets on press brakes I looked at  
14 multiple years. I also looked at mechanical power  
15 presses, which is not the product here but it is a  
16 brother or sister kind of product.

17 And I looked at National Safety Council, their  
18 accident prevention manuals and their other data  
19 sheets and other publications. And I cited some of  
20 those in here. I don't think they are -- I am not  
21 aware of anything that is inconsistent with their  
22 broader publication.

23 BY MR. HARTMAN:

24 Q. What does a chairman's responsibility --

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1 what are the responsibilities of a chairman of the  
2 power press, forging and metal fabricating section  
3 of the National Safety Council?

4 A. You know, it is probably written down  
5 somewhere; and I don't have it memorized. But  
6 generally the responsibility is to through that  
7 committee to help facilitate the committee's  
8 promotion of safety, whether that be in the form of  
9 seminars, data sheets, answering questions,  
10 providing guidance to people who have problems,  
11 promoting safety through posters, through other  
12 kinds of presentations, to making sure that the  
13 membership has a broad representation on the  
14 committee, to go to different manufacturing  
15 facilities and see how other people are doing  
16 things.

17 So whether I was chairman, vice-chairman  
18 or just on the committee, we would go to the John  
19 Deere plant and see how they would do things  
20 including the use of press brakes and mechanical  
21 power presses.

22 We went to Ford plants to do those kinds  
23 of things.

24 We went to -- the committee went to NASA

1 or Boeing, rather, to look at airplane production  
2 again using parts that are made on press brakes and  
3 power presses and those kinds of things.

4 That's generally what they do. I think  
5 there was some added responsibility for collecting  
6 money and making annual reports and getting certain  
7 paperwork in on time but those were kind of  
8 procedural things.

9 BY MR. HARTMAN:

10 Q. Your report on page 2 indicates that you  
11 were a contributor and reviewer of the National  
12 Safety Council's publications, Safeguarding  
13 Illustrated and The Power Press Safety Manual.

14 Did I accurately read that?

15 A. That's correct, yes.

16 Q. As a contributor and reviewer, did you  
17 edit those publications to see to it that they were  
18 accurate?

19 A. Most of the time the editor doesn't do  
20 that. So you just asked me did you use a paint  
21 brush to sand something.

22 The editor typically is someone who is  
23 employed by the National Safety Council to make  
24 sure the grammar is right because engineers are

1 poor at grammar and spelling, make sure that we  
2 have parallel structures, make sure that when we  
3 use Roman numerals, we don't switch to Arabic  
4 numerals.

5 What my role and a handful of other  
6 people's roles were was to read it to make sure it  
7 is correct, to try to update it if there was  
8 something new and interesting and to make sure that  
9 there was a certain consistency throughout that  
10 document and other documents related to these  
11 issues.

12 Q. When you say read it to make sure it was  
13 correct, read it to make sure it was grammatically  
14 correct or substantively correct?

15 A. Technically correct.

16 Q. Explain to me what technically correct  
17 means.

18 A. In other words if something said it is  
19 supposed to be four inches and it was supposed to  
20 be 40 inches, the hope was that we would catch that  
21 mistake. If it said something was supposed to be  
22 red and it was supposed to be r-e-d and it was  
23 spelled r-e-a-d, it is both an editing kind of  
24 thing as far as words but it is also a technical

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1 thing as far as the -- it is supposed to be a  
2 color, not an activity.

3 So we were looking for that. We were  
4 looking for better art work, more clearer verbiage  
5 every now and then. Sometimes we would have added  
6 a phrase or a comma some place or added a sentence  
7 or a better explanation of something, those kinds  
8 of things.

9 Q. As a contributor, what portions of those  
10 publications did you contribute?

11 A. I would have to go back and look  
12 specifically. My recollection was in the Power  
13 Press and Safety Manual I reviewed everything that  
14 was there, offered suggestions and changes and  
15 clarifications. And then I think I actually  
16 authored a whole section having to do with kind of  
17 industrial hygiene considerations in that kind of  
18 equipment.

19 And in the other publication --

20 Q. Which would be Safeguarding Illustrated?

21 A. Yeah, I remember commenting on several of  
22 the diagrams, asking for clarification, putting  
23 arrows in or using better words that were more  
24 descriptive and more current words, more consistent

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1 terminology, those kinds of things.

2 Q. Did you contribute any of the text to the  
3 Safeguarding Illustrated?

4 A. I probably offered and may have included  
5 phrases and sentences but I doubt if I offered --  
6 I know I didn't offer a page of text. But there  
7 may have been a sentence or two here or there, a  
8 few words here or there, a phrase here or there,  
9 maybe, you know, the addition of arrows pointing so  
10 it was clearer what things were being talked about,  
11 probably asked for certain artwork to be modified,  
12 updated, changed, removed, enlarged, those kinds of  
13 things.

14 Q. You indicate that your work on human  
15 factors and machine safety was published in the  
16 Stamping journal; am I correct?

17 A. Yes.

18 Q. Do you have a copy of that article with  
19 you here today?

20 A. No, I don't, but it is on the Internet.

21 Q. How would I find it on the Internet?

22 A. If you want, I will send you a copy. Why  
23 don't you send the attorney a request for that?

24 And I will send him a copy, and he will send it to

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1       you.

2           Q.    I am making that request now.

3           A.    I won't remember it now, so pardon my poor  
4       memory on things like that.

5           Q.    Let's go to page 3.

6           A.    Sure.

7           Q.    Materials reviewed specifically for this  
8       matter, does that section outline the materials  
9       that you reviewed for this matter?

10          A.    Specifically is spelled wrong, isn't it?  
11               Pardon me? Are these --

12          Q.    By the way, specifically is spelled  
13       incorrect. We won't hold that against you though.

14          A.    Your question was --

15          Q.    Are those -- under the materials reviewed  
16       specifically for this matter, are those the  
17       materials that you reviewed in anticipation for  
18       preparing your report?

19          A.    I think so, yes.

20          Q.    Were there any other materials that you  
21       intend on relying upon in order to formulate the  
22       opinions in this matter?

23          A.    Well, there were a bunch of materials  
24       I sent to Mr. Robinson that he sent on to you,

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1 I believe. And then based on the new positions of  
2 Ralph Barnett from his deposition, I made copies of  
3 these other materials, some of which we have talked  
4 about here. I am not sure if we talked about all  
5 of them.

6 Q. What other materials -- okay.

7 So am I correct that any additional  
8 materials that are not cited in materials reviewed  
9 specifically for this matter would be materials  
10 contained in those you forwarded to Mr. Robinson to  
11 be forwarded to me?

12 A. Yes.

13 Q. Or new materials --

14 A. Or they are cited in the text here. There  
15 are a lot of web pages or things off the Internet  
16 or other documents. In other words, in this list  
17 of materials reviewed I don't think I ever  
18 mentioned any of the safety briefs. But I talk  
19 about them a lot, and I reference them in the  
20 report.

21 There are those books we talked about on  
22 page 14. I don't think they are detailed here  
23 because they are detailed in the report.

24 Q. Okay. So the materials you are going to

1     rely upon in order to formulate your opinions would  
2     be materials specifically reviewed for this matter,  
3     those materials, materials that you sent to  
4     Mr. Robinson for him to forward to me?

5           A.     Uh-huh.

6           Q.     Materials specifically cited in the body  
7     of the article and those that you prepared in  
8     response to Professor Barnett's deposition?

9           A.     That's correct.

10          Q.     Okay. Would you please identify for me  
11     any additional documents that have not been  
12     identified that you have obtained in response  
13     Professor Barnett's deposition?

14          A.     That I specifically obtained in response  
15     Professor Barnett's deposition, that was your --

16          Q.     Right.

17          THE WITNESS: Why don't we take like a  
18     three-minute break? Let me go through here and see  
19     what they are. Otherwise I am just going to be on  
20     tape fumbling around looking for those kinds of  
21     things.

22          MR. HARTMAN: No objection.

23          THE VIDEOGRAPHER: Off the record at 10:24 am.

24                                 (A short break was taken.)

1 THE VIDEOGRAPHER: Back on the record at  
2 10:28 a.m.

3 THE WITNESS: I think you asked me what other  
4 things -- my recollection is what other things are  
5 not on this list, are not in the report or haven't  
6 been turned over that I absolutely certainly have  
7 some knowledge of.

8 The only things I can think of that are not  
9 there were I have two DVDs. One I believe is Ralph  
10 Barnett's testing and I think the other one is a  
11 video inspection without sound; then an article  
12 entitled Press Brakes and You -- Whose Business is  
13 Safety? Everybody's; a --

14 MR. HARTMAN: Let's mark that, please.  
15 Would that be No. 8?

16 THE COURT REPORTER: That would be 8.

17 (Whereupon, HUTTER Deposition  
18 Exhibit No. 8 was marked for  
19 identification.)

20 THE WITNESS: A Internet downlisting  
21 specifically for a Cincinnati company on a press  
22 brake again showing the cycle time for their press  
23 brakes.

24 The other document just had a whole bunch of

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1 different press brakes, and I thought I would look  
2 in a little more detail about one manufacturer.  
3 And again they have cycle times of, oh, like 1.4  
4 and 2 seconds as examples.

5 Do you want to mark that also?

6 MR. HARTMAN: Yes, please.

7 (Whereupon, HUTTER Deposition  
8 Exhibit No. 9 was marked for  
9 identification.)

10 THE WITNESS: Then I think this document was  
11 part of what was documents from my file that were  
12 copied that I believe I sent to you. But just to  
13 make sure I have a B-11 committee document from  
14 September of '89 asking questions about  
15 interpretations of some of the standards and in  
16 particular on the last page there is a statement  
17 that says, since the employer is the one who  
18 determines the tooling method of feeding operation  
19 and safeguarding, only the employer is able to  
20 determine if the provisions of this clause are  
21 required.

22 This clause has to do with safeguarding. So  
23 I think it was part of that material that was sent  
24 over but just to be on the safe side.

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1 MR. HARTMAN: We will mark that as well,  
2 please.

3 THE WITNESS: Sure.

4 (Whereupon, HUTTER Deposition  
5 Exhibit No. 10 was marked for  
6 identification.)

7 MR. HARTMAN: That would be No. 9; am  
8 I correct?

9 THE COURT REPORTER: Ten.

10 THE WITNESS: And then I think in the documents  
11 here I mentioned I did an inspection and I talk  
12 about photographs but -- and I know I sent to  
13 Paul's office the photographs and the video but  
14 I don't know for certain if those have been given  
15 to you or not but I have a copy of the photographs  
16 and of the videotape.

17 BY MR. HARTMAN:

18 Q. I believe I have a videotape and I don't  
19 recall seeing photographs. That doesn't mean that  
20 they weren't forwarded to me. I am not implying  
21 that at all.

22 MR. ROBINSON: I think they were and they  
23 should have been.

24 MR. HARTMAN: Let me look at those photographs.

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1 MR. ROBINSON: In fact Professor Barnett  
2 referenced them in his testimony, so I know they  
3 would have come through you.

4 MR. HARTMAN: I am just being doubly sure just  
5 checking through.

6 Paul, some of the photos look familiar. Some  
7 of them are not -- and again I am not implying --  
8 there has been so much exchanged in this. I would  
9 ask that you please provide me with just a  
10 photocopy of these at your earliest convenience.

11 Thank you, sir.

12 MR. ROBINSON: Why don't you check to see if  
13 you have them first? We wouldn't give you  
14 piecemeal photographs, and we have confirmed that  
15 you have them because Professor Barnett commented  
16 on them and how there were photographs of other  
17 machines located at the facility where the press  
18 brake was located at the time of Dr. Hutter's  
19 inspection.

20 So rather than just asking us to do something  
21 that appears to be unnecessary, why don't you  
22 confirm whether or not you have them or not?

23 MR. HARTMAN: I believe Professor Barnett  
24 referenced the videotape, and the videotape has an

1 inspection of other machines. But I will check  
2 anyway.

3 MR. ROBINSON: If you would. I would be glad  
4 to fire off another copy for you.

5 BY MR. HARTMAN:

6 Q. Sir, it is my understanding that -- I am  
7 sorry.

8 Are there any more articles or documents  
9 that you have relied upon in formulating your  
10 opinions in the report that have not been  
11 identified?

12 A. I don't think so.

13 Q. So the information -- the documents that  
14 you have produced today that we have marked as  
15 exhibits, the articles referenced in the body of  
16 your argument, excuse me, your report, those other  
17 materials specifically we reviewed for this matter,  
18 would that be the extent -- and those cited in that  
19 paragraph as far as textual documents?

20 A. And those obviously we have just labeled  
21 now.

22 Q. Yes.

23 A. I guess, you know, I have got years of  
24 going to school and looking at documents that there

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1 is sometimes things that I am aware of that I don't  
2 think anyone would need a document for. And  
3 I don't know that there is something I am intending  
4 to rely on but I guess there could be.

5 I didn't intend to hold anything back.  
6 And I believe these are all of the documents  
7 that I would normally be using. But if someone  
8 asked a question, oh, what's the basis of OSHA, you  
9 know, I happen to know it came out of a certain  
10 piece of legislation. I didn't provide that  
11 document here.

12 Q. So other than those things which are  
13 apparently very clear to you, you have identified  
14 the documents that you have relied upon in  
15 formulating your opinions in this matter?

16 A. Yes.

17 Q. In your videotape at the very end of the  
18 tape there is a very brief snippet of tape that  
19 shows you looking at the electrical system of the  
20 press brake, the Heim press brake; do you recall  
21 that?

22 A. I remember something but I don't remember  
23 the details of it. I think it was opening up the  
24 cabinet looking at some wiring, yes.



1 Q. Is there anything that -- strike that.

2 Is there anything that you saw in your  
3 examination of the electrical system of this press  
4 brake that caused or contributed to the accident  
5 Ms. Lindquist was involved in?

6 MR. ROBINSON: Object to the form of the  
7 question.

8 THE WITNESS: I haven't made that  
9 determination.

10 BY MR. HARTMAN:

11 Q. Have you -- are you investigating that?

12 A. Not currently, no.

13 Q. Do you intend to investigate that?

14 A. I have no intention but I guess someone  
15 could ask me to look into it.

16 Q. Let's go to page 7 of your report, please.

17 A. Sure.

18 Q. By the way, prior to appearing today did  
19 you happen to review your report in preparation of  
20 today's testimony?

21 A. I think the last time I reviewed the  
22 report in any detail was for the last scheduled  
23 deposition I was supposed to have last week was  
24 canceled or postponed.

1 Q. I know nothing about a deposition  
2 canceled.

3 MR. ROBINSON: Pardon me?

4 THE WITNESS: Last week I was scheduled, I was  
5 supposed to be deposed --

6 MR. ROBINSON: It was scheduled to be taken in  
7 the afternoon.

8 MR. HARTMAN: We had that very discussion --  
9 you are talking about Friday if we got done with  
10 Switalski --

11 MR. ROBINSON: Sure, that's what we planned on,  
12 him starting it --

13 THE WITNESS: I was prepared to go that day and  
14 right before that was probably the last time  
15 I looked at it in some great detail.

16 BY MR. HARTMAN:

17 Q. Have you had the chance to review your  
18 report?

19 A. Yes.

20 Q. Is there anything contained in your report  
21 that you would like to change before we go any  
22 further?

23 A. I would like to change the spelling of  
24 specifically. But as I sit here I can't think of

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1 anything that I would think that's material to my  
2 opinions that I would like to change.

3 Q. Is there anything that when you read it  
4 the last time, you felt was inaccurate even if it  
5 wasn't material?

6 A. I can't think of anything.

7 Q. In the second paragraph you indicate,  
8 referring to press brakes, that it is usually  
9 considered a multi-purpose machine typically able  
10 to produce long V-type bends through the use of  
11 owner-supplied dyes; am I correct?

12 A. Yes.

13 Q. Is that a distinguishing characteristic of  
14 a press brake?

15 MR. ROBINSON: Object to the form of the  
16 question.

17 THE WITNESS: Only in that they tend to have  
18 longer, narrower beds than mechanical presses but  
19 you could put a long, narrow bed on a mechanical  
20 press.

21 BY MR. HARTMAN:

22 Q. You indicate that the machine does not  
23 have a pinch plate that caused the plaintiff's  
24 injuries when it left the control time; am

1 I correct?

2 A. Yes.

3 Q. Am I correct, sir, that the only way a  
4 press brake can become operational is if it does in  
5 fact ultimately have a pinch plate?

6 MR. ROBINSON: Object to the form of the  
7 question.

8 THE WITNESS: I would say that the vast  
9 majority, the preponderance, 90 percent plus of the  
10 operations, there is probably a pinch point.  
11 Almost in all circumstances there is supposed to be  
12 some kind of safeguarding applied to that. But  
13 I would say, yes, it is probably fair to say that  
14 more likely than not you are going to have a pinch  
15 point somewhere with the press brake.

16 BY MR. HARTMAN:

17 Q. So press brakes when they are manufactured  
18 are intended to have introduced to them a means by  
19 which there is a pinch plate?

20 MR. ROBINSON: I will object to the form of the  
21 question.

22 THE WITNESS: Typically if there are dyes,  
23 those dyes have pinch points. There are some dyes  
24 where they are a unitized dye. And you put the

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